

From: Caroline Ahearn/DC/USEPA/US
Sent: 6/5/2012 4:43:11 PM
To: Steven Chester/DC/USEPA/US@EPA; Lawrence Starfield/DC/USEPA/US@EPA
CC: Mark Badalamente/DC/USEPA/US@EPA
Subject: Summary of Witness Testimonies for House Energy and Commerce Committee hearing entitled: "EPA Enforcement Priorities and Practices," June 6, 2012.

Larry and Steve,

Below is a summary of the witnesses' statements for the House Energy and Commerce Committee's hearing tomorrow on EPA enforcement. Al Armeniz is on the first panel and his statement is not posted yet. The statements are available at <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9552>.

Panel II:

Dr. Bryan W. Shaw, Chairman of the Texas Commission on Environmental Quality (TCEQ):

- It took EPA 15 years (instead of the required 18 months) to reject TCEQ's Flexible Permits Program that allowed flexible air permits without interference from the federal government. The TCEQ challenged EPA's disapproval and a decision by the court is currently pending.
- The EPA Region 6 has not made final determinations on rules, attainment demonstrations, and other SIP revisions in a timely manner. The lack of timely action creates uncertainty among the regulated community, and the delay may result in enforcement by EPA against the regulated community for failure to comply with the approved SIP, but where industry is complying with the new TCEQ rules.
- The EPA Administrator signed the Cross-State Air Pollution Rule (CSAPR) rule without providing the TCEQ and affected power plants within the state the opportunity to comment on them. The rule puts at risk the economic future of power generation; those dependent on affordable electricity in Texas; and places vulnerable citizens at a significant health and safety risk.
- Fourteen states, including Texas, filed administrative and legal challenges to the CSAPR rule. The U.S. Court of Appeals stay put the rule on hold until the courts could make their final decision on the merits of the case.
- EPA's requirement for computer groundwater modeling when applying for aquifer exemptions for in-situ uranium mining projects does not follow EPA own guidance and ignores the applicable UIC program in Texas.

Barry T. Smitherman, Chairman, Texas Railroad Commission

- Chairman of the Railroad Commission of Texas, responsible for overseeing the nation's leading oil and gas producing state, which produced 413 million barrels of oil and 7.4 trillion cubic feet of natural gas in 2011.
- EPA's enforcement activities have affected energy production in Texas, specifically:
 - **EPA's Enforcement was unjustified in certain areas:**
 - There was no evidence to indicate that the natural gas production wells were the source of the gas in the water wells.
 - Range Resources was forced to spend over \$4 million defending itself against EPA's persecution, not including income lost from halted production. In March 2012, after more than a year in a federal court battle with Range Resources, EPA dropped its emergency endangerment order against the company.

▪ **Concerns about Pavillion, Wyoming & Dimock, Pennsylvania events**

- EPA accused oil and gas operators of groundwater contamination from their hydraulic fracturing operations without sufficient evidence to justify those accusations.

Allen Short, General Manager, Modesto Irrigation District

On behalf of the Modesto Irrigation District, M-S-R Public Power Agency, and the Southern California Public Power Authority

- Highlights concerns about the implementation and enforcement of EPA's Federal Implementation Plan (FIP) at the San Juan Generating Station, a four-unit 1,680 MW coal-fired power plant near Farmington, New Mexico, which is in EPA Region 6. The FIP was approved last year.
- EPA's FIP will cost 10 times more than the SIP developed by the State of New Mexico, to address Regional Haze under the CAA.
- New Mexico's 2011 issued SIP would have required the San Juan Generating Station to spend \$77 million to reduce emissions by 20%, installing Best Available Retrofit Technology (BART).
- EPA rejected the provisions of the New Mexico SIP addressing regional haze controls at the San Juan Generating Station, while EPA approved the rest of the State's SIP on May 31, 2012.
- The owners of the plant have challenged EPA's FIP in Federal Court, and the State of New Mexico requested a stay of enforcement of the FIP. Both actions are pending.
- They are particularly concerned that even after spending almost a billion dollars to comply with EPA's regional haze FIP requirements, we may still not be in compliance. The owners have already installed controls for NOx, SO2, PM, and mercury.
- New Mexico's regional haze SIP is one of 37 state regional haze plans that EPA is committed to take action on before the end of this year under the terms of a consent decree settling litigation brought by environmental organizations. Our New Mexico case is an example of how EPA's enforcement of regional haze regulations is neither effective nor mindful of the financial impacts to electric customers.

Robert J. Sullivan, Jr., Chairman, Oklahoma Independent Petroleum Association (OIPA)

- Like the subcommittee, OIPA and independent producers across the nation are troubled by the enforcement philosophy of EPA as expressed by former EPA Region 6 Administrator Al Armendariz.
- As an invited guest to the OIPA annual meeting, OIPA's impression of Mr. Armendariz "was of a highly motivated and committed environmental activist who opposed fossil fuels."
- He discusses the increase in compliance costs, specifically:
 - compliance software costs associated with the greenhouse gas reporting requirements under EPA's proposed NSPS and NESHAP exceed \$227,000 plus \$54,000 in annual maintenance and updates. That's just software expenses for one company
- The EPA Region 6 enforcement case against Range Resources involving groundwater contamination in Parker County, Texas, was purportedly caused by hydraulic fracturing. This action was withdrawn after a citizen admitted lying.
- The Parker County, Texas, incident – taken in context with similar egregious EPA actions and subsequent EPA reversals related to hydraulic fracturing operations in Pavillion, Wy. (Region 8) and Dimock, Penn. (Region 3) – leads me to believe that EPA's problems are national in scope.

Joel Mintz, Professor of Law at Nova Southeastern University.

- For the past three and a half years, EPA's approach to enforcement has employed the same overall philosophy and strategy that have characterized EPA enforcement since the early 1970s.
- From the Agency's beginnings in the Nixon administration to the present day, EPA enforcement has been based on a theory of deterrence.

- EPA's annual enforcement reports provide statistical evidence that EPA enforcement under Obama has not been uniquely harsh. During the eight years of the George W. Bush administration, the civil penalties assessed against environmental law violators averaged \$117 million per year. In contrast, during the first three years of the Obama administration, EPA enforcement resulted in the assessment of a lower amount of civil penalties: \$115 million per year.
- EPA enforcement actions against the oil and gas industry declined during the Obama presidency, as compared with the preceding administration. EPA brought only 87 enforcement actions against this industry in 2011, while it initiated 224 such actions in 2002.
- EPA's enforcement work during the Obama period has been similar in nature to its work in nearly every administration since the Agency was established, regardless of the party affiliation of the president

Caroline Ahearn
Director
Policy and Legislative Coordination Division
Office of Administration and Policy
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
(202) 564-1716

THIS MESSAGE IS CONFIDENTIAL and may contain legally privileged information. If you receive it in error, please delete it immediately, do not copy, and notify the sender. Thanks.